



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

KUTT et al.

Serial No.: 10/806,886

Filed: March 22, 2004

Atty. File No.: 4239-3-1-1

For: "METHOD AND SYSTEM FOR
REDUCING BODY WEIGHT IN AN
ENCLOSED ATMOSPHERIC
ENVIRONMENT"

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

) Group Art Unit: 1724

)

) Examiner: LAWRENCE Jr., Frank M.

)

) PROVIDING INFORMATION FROM

) RELATED LITIGATION

) UNDER MPEP § 2001.06(C)

)

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VIRGINIA 22313-1450.

TYPED OR PRINTED NAME: Brenda Carpenter

SIGNATURE: Brenda Carpenter

Dear Sir:

Pursuant to the MPEP 2001.06(c), Applicants hereby disclose information from related litigation. One of the Applicants, Mr. Lawrence Kutt, and the Assignee, Colorado Altitude Training LLC, are currently involved in litigation in the United States District Court for the Southern District of New York, Civil Action No. 02-CV-6191. This litigation relates to patent infringement and involves allegations of non-infringement, invalidity and unenforceability.

Enclosed herewith is a copy of the present pleadings in the New York action (Exhibit A). Upon the Examiner's request, Applicants' counsel can obtain further information with respect to the litigation, including copies of any of the pleadings.

Mr. Neal S. Cohen of Faegre & Benson LLP, phone number (303) 447-7700, is representing Mr. Kutt and Colorado Altitude Training LLC with respect to this litigation..

It is respectfully requested that the Examiner review the enclosed information and acknowledge receipt of the same.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Joseph E. Kovarik

Registration No. 33,005

1560 Broadway, Suite 1200

Denver, Colorado 80202-5141

(303) 863-9700

Date: 9/7/05

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HYPOXICO, INC.,

Plaintiff, Counterclaim-
Defendant,

vs.

COLORADO ALTITUDE TRAINING
LLC and LAWRENCE KUTT,

Defendants/Counterclaim-
Plaintiffs/Third Party
Plaintiffs,

vs.

IGOR K. KOTLIAR,

Third Party Defendant.

Civil Action No. 02 Civ. 6191 (JGK)

PLEADINGS INDEX

NO.	PARTY	DESCRIPTION	DATE
1.	Hypoxico	Complaint Patent Infringement	08/02/02
2.	Court	Individual Practices of Judge John G. Koeltl	08/27/02
3.	CAT/Kutt	Motion for 30-day Extension of time to Answer or Otherwise Plead	08/27/02
4.	Court	Order granting 30-day extension of time to answer to 9/26/02	08/27/02
5.	CAT/Kutt	Motion to Dismiss or, in the Alternative, to Transfer Venue	09/25/02
6.	CAT/Kutt	Declaration of Lawrence M. Kutt in Support of Motion to Dismiss or, in the Alternative, to Transfer Venue	09/25/02
7.	Hypoxico	Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss or, in the Alternative, to Transfer	11/11/02
8.	CAT/Kutt	Reply in Further Support of Defendants' Motion to Dismiss or, in the Alternative, to Transfer	11/25/02

NO.	PARTY	DESCRIPTION	DATE
9.	CAT/Kutt	Letter to Court to Reschedule Hearing on Motion to Dismiss	03/05/03
10.	CAT/Kutt	Motion <i>Pro Hac Vice</i> for Admission of Robert R. Brunelli, Esq.	03/11/03
11.	Court	Order Granting Admission of Robert R. Brunelli, Esq. <i>Pro Hac Vice</i>	03/12/03
12.	Court	Scheduling Order	04/08/03
13.	CAT/Kutt	Submission re Attendance at Settlement Conference	04/17/03
14.	CAT/Kutt	Confidential Settlement Statement material for use at Settlement Conference	04/21/03
15.	Hypoxico	Letter confirming 6/17/03 oral argument	05/29/03
16.	Court	Opinion and Order – denying motion to dismiss or change venue	12/10/03
17.	CAT/Kutt	Answer, Affirmative Defenses and Counterclaims and Third Party Complaint (Trial by Jury Demanded)	12/17/03
18.	Hypoxico	Amended Complaint	12/22/03
19.	CAT/Kutt	Answer to Amended Complaint, Affirmative Defenses, Counterclaims and Third Party Complaint (Trial by Jury Demanded)	01/12/04
20.	CAT/Kutt	Disclosure of Interested Parties Pursuant to Fed.R.Civ.P. Rule 7.1(a)	01/12/04
SEE VOLUME 2			
21.	Hypoxico	Reply to Counterclaims; Answer to Third Party Complaint; and Hypoxico's Counterclaim	02/06/04
22.	CAT	Colorado Altitude Training, LLC's Reply to Plaintiff Hypoxico, Inc.'s Counterclaim	02/12/04
23.	CAT/Kutt	Notice of Change of Address	03/02/04
24.	CAT/Kutt	Letter to Judge Koeltl requesting referral to Magistrate for Settlement Conference	03/03/04
25.	Court	Order of Reference to Magistrate Judge	03/05/04
26.	CAT/Kutt	Letter to Judge Koeltl requesting referral to Magistrate	03/16/04
27.	Court	Letter confirming settlement conference – 4/7/04	03/17/04
28.	Court	Letter rescheduling settlement conference – 4/6/04	03/29/04
29.	CAT/Kutt	Letter to Mag. Maas re rescheduling of settlement conference	03/29/04

NO.	PARTY	DESCRIPTION	DATE
30.	Court	Acknowledgement of Settlement Conference	03/29/04
31.	CAT/Kutt	Letter to Mag. Maas re confidential settlement statement	04/01/04
32.	Joint	Joint Motion to Reset Pretrial Deadlines	04/22/04
33.	CAT/Kutt	Proposed Stipulated Protective Order	08/16/04
34.	Joint	Joint Motion to Reset Pretrial Deadlines	08/18/04
35.	Joint	Proposed Stipulated Protective Order	08/18/04
36.	Court	Stipulated Protective Order	08/19/04
37.	Court	Order Resetting Pretrial Deadlines	08/19/04
38.	CAT	Notice of Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action	10/21/04
39.	CAT	Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action	10/21/04
40.	CAT	Brief in Support of Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action	10/21/04

NO.	PARTY	DESCRIPTION	DATE
41.	CAT	Declaration of Robert R. Brunelli in Support of Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action	10/21/04
42.	Joint	Stipulation to Permit Filing of A Second Amended Complaint	10/25/04
43.	Hypoxico	Second Amended Complaint	10/25/04
44.	Court	Docket Entry - Answer to Amended Complaint due 11/8/04	10/27/04
45.	CAT/Kutt	Answer to Second Amended Complaint, Affirmative Defenses, and CAT's Counterclaims and Third Party Complaint (Trial By Jury Demanded)	11/01/04
SEE VOLUME 3			
46.	CAT	Notice of Withdrawal of Motion to Amend Colorado Altitude Training, LLC's Affirmative Defenses and Counterclaims on Issues of Unenforceability	11/01/04
47.	Hypoxico	Hypoxico's and Kotliar's Memorandum in Opposition to CAT's Motion for Declaration of Right to Proceed Alone	11/08/04
48.	CAT	Defendant/Counter-Plaintiff Colorado Altitude Training, LLC's Reply in Support of Motion for Declaration of Right to Proceed Alone and Request for Oral Argument	11/12/04
49.	CAT	Notice of Motion to Supplement the Record Supporting CAT's Motion to Proceed in its Own Name for Infringement	12/21/04
50.	CAT	Motion to Supplement the Record Supporting CAT's Motion to Proceed in its Own Name for Infringement	12/21/04
51.	Hypoxico	Hypoxico's Reply to CAT's Counterclaims; Kotliar's Answer to CAT's Third Party Complaint; and Hypoxico's and Kotliar's Counterclaim	01/07/05
52.	CAT/Kutt	Entry of Appearance of Counsel for Defendants/Counterclaim Plaintiffs/Third Party Plaintiffs	02/14/05
53.	CAT/Kutt	Notice of Motion for Leave to Withdraw as Attorneys of Record for Defendants/Third Party Plaintiffs Colorado Altitude Training LLC and Lawrence Kutt	02/14/05

NO.	PARTY	DESCRIPTION	DATE
54.	CAT/Kutt	Memorandum of Law in Support of Motion for Leave to Withdraw as Attorneys of Record for Defendants/Third Party Plaintiffs Colorado Altitude Training LLC and Lawrence Kutt	02/14/05
55.	CAT/Kutt	Declaration of Robert R. Brunelli	02/14/05
56.	CAT/Kutt	Notice of Motion and Affidavit of John Nonna for admission <i>pro hac vice</i> of Neal Cohen	02/18/05
57.	CAT/Kutt	Notice of Motion and Affidavit of John Nonna for admission <i>pro hac vice</i> of Jared Briant	02/18/05
58.	CAT/Kutt	Reply to Hypoxico's and Kotliar's Counterclaim	04/06/05
59.	CAT/Kutt	Letter to Judge Koeltl re depositions	05/17/05
60.	CAT/Kutt	Letter to Judge Koeltl re pretrial proceedings	05/17/05
61.	Court	Order Granting Withdrawal of Sheridan Ross P.C. and Vaslas, Lepowsky, Hauss & Danke, LLP as Attorneys of Record for Defendants/Third Party Plaintiffs Colorado Altitude Training, LLC and Lawrence Kutt	05/18/05
62.	Court	Order granting admission of Neal Cohen <i>pro hac vice</i>	05/18/05
63.	Court	Order granting admission of Jared Briant <i>pro hac vice</i>	05/18/05
64.	Hypoxico	Letter to Judge Koeltl requesting waiver of protections requested by CAT	05/19/05
65.	Court	Order scheduling argument – 6/8/05	05/23/05
66.	Hypoxico	Letter to Judge Koeltl re agreement to be bound	06/09/05
67.	CAT/Kutt	Letter to Judge Koeltl enclosing agreement to be bound	06/09/05
68.	CAT/Kutt	Letter to Judge Koeltl clarifying Hypoxico's letter of 6/9/05	06/10/05
69.	Hypoxico	Letter to Judge Koeltl responding to CAT's letter of 6/10/05	06/13/05
70.	Court	Opinion and Order	06/13/05
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71.	CAT/Kutt	Letter to Judge Koeltl re Opinion and Order	07/05/05
72.	Court	Order staying case until 10/7/05	07/05/05